



The Comptroller General
of the United States

Washington, D.C. 20548

Harfurther

Decision

Matter of: Dictaphone Corporation
File: B-228366
Date: January 12, 1988

DIGEST

1. When placing an order under a mandatory, multiple-award Federal Supply Schedule contract, a contracting agency is not required to select the lowest priced vendor where the agency reasonably determines that only the higher priced vendor's product offers features necessary to obtain effective performance.

2. When a contracting agency awards a purchase order to other than the lowest priced vendor under a mandatory, multiple-award Federal Supply Schedule contract, the General Accounting Office will review the agency's justification for making the award to insure that the award selection is reasonably based.

DECISION

Dictaphone Corporation protests the National Institutes of Health's (NIH) August 19, 1987, award of purchase order No. 263-FD-729806 to Lanier Business Products, Inc., for a Lanier digital dictating system under mandatory, multiple-award Federal Supply Schedule (FSS) contract No. GS-00F-85661. Dictaphone contends that it was not solicited and not allowed to compete for the award.

We deny the protest.

NIH concluded that only Sudberry Systems (Dictaphone distributes Sudberry's equipment) and Lanier offered digital dictating systems of the type required. Therefore, NIH states that it contacted both firms to obtain the technical information needed to make a choice. The information supplied by both firms was evaluated, which resulted in the determination that the Sudberry system, while meeting the majority of the agency's requirements, did not provide

others that were needed. Lanier's system did meet all requirements. For example, the Sudberry equipment did not have a prompt system to assist new users, a capability to insert information after the original dictation, a 100-percent backup disk capability and, in addition, would not be compatible with NIH's existing equipment. Consequently, NIH ordered the Lanier system even though the Sudberry system was cheaper.

Dictaphone contends that it was never informed of the procurement until it learned of the award to Lanier and that it was never requested to provide NIH with any technical information on the system so that it might compete for the award. While it appears to object to the selection of the higher priced equipment, it does not specifically dispute the agency's rationale for ordering the Lanier equipment.

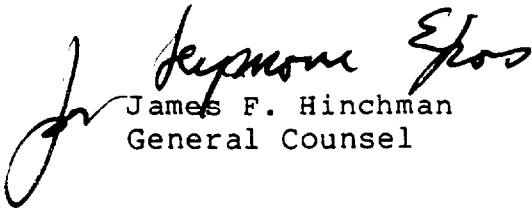
Although Dictaphone asserts that NIH never requested technical information from it and asks that NIH provide the names of NIH and Dictaphone employees involved, the NIH report contains names of its employees, it says, contacted Sudberry and Dictaphone, and the name of a Sudberry representative contacted by NIH and a Dictaphone representative who allegedly supplied information on the Sudberry system.

The protester has not submitted anything in support of its contention other than its self-serving statement which conflicts with the agency's report. A. J. Fowler Corp., B-224156, Jan. 8, 1987, 87-1 CPD ¶ 33. The record also shows, as indicated above, that the agency in fact conducted an evaluation of the Sudberry system. Consequently, we have no basis upon which to conclude that the agency did not solicit and obtain information from the protester.

Further, an agency ordering from an FSS schedule is not required to order from the lowest priced vendor if an appropriate justification exists for purchase from a higher priced vendor. Federal Acquisition Regulation (FAR), 48 C.F.R. § 8.405-1(a) (1986). Thus, for example, an agency may select a higher priced product where the agency determines that the product is needed to be compatible with existing equipment, FAR, 48 C.F.R. § 8.405-1(a)(3), or that the product offers features lacking in the lowest priced product which are necessary to obtain effective performance, FAR, 48 C.F.R. § 8.405-1(a)(5). Where an agency determines that a justification exists for placing an FSS order with a higher priced vendor, our Office will object only if it can be shown that the determination lacks a reasonable basis. White Office Systems, Inc., B-227845, Sept. 8, 1987, 87-2 CPD ¶ 227. Since Dictaphone has raised no specific

objection to NIH's determination, we have no basis upon which to conclude that the agency's judgment was unreasonable.

The protest is denied.

James F. Hinchman
General Counsel